

**Tribal Caucus of the
EPA Region 10
Tribal Operations Committee (RTOC)**

**Compilation of Recommendations and
Priorities to Help Guide Agency Changes in
Administration and Inform FY 2010
Appropriations**

Prepared and Approved by the Region 10
Tribal Caucus
and
Volunteer Tribal Environmental Staff
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Introduction

Since 1994, the Environmental Protection Agency (EPA) has engaged in a partnership with federally-recognized Tribes through the Tribal Operations Committee (TOC) to protect and improve Tribal health and environment consistent with the EPA's 1984 Indian Lands Policy, trust responsibility, environmental laws, regulations, policies, and guidance. The TOC provides an effective and important vehicle for input into EPA "operational" decision-making affecting Indian Country, but does not substitute for the government-to-government relationship that exists between EPA and individual Tribal governments.

The TOC's governance is implemented on both a national and regional basis. At the national level, the National Tribal Operations Committee (NTOC) is comprised of both EPA Senior Leadership and a Tribal Caucus, consisting of nineteen Tribal representatives from the nine EPA regions where federally-recognized Tribal governments are located. The NTOC (also commonly referred to as the TOC) is co-chaired by the EPA Administrator and a Tribal Chairperson, and operated under a charter. Four of the nineteen Tribal representatives to the NTOC Tribal Caucus are from Region 10 – two representing Alaska, one representing Idaho, eastern Oregon, and eastern Washington, and one representing western Oregon and Washington. The NTOC recognized a need for regional input, and established Regional Tribal Operations Committees (RTOCs) to further Tribal environmental objectives at the regional level and provide assistance to the respective NTOC representatives. The RTOC for Region 10 (RTOC) is comprised of both EPA Region 10 staff (or designated alternates) and a Tribal Caucus, consisting of the four regional NTOC representatives and five Regional Tribal representatives (or designated alternates) for Alaska, Idaho, Oregon, western Washington, and eastern Washington, respectively. RTOC is co-chaired by the EPA Region 10 Administrator and a Tribal Chairperson, and operated under a charter having the following goals:

1. Provide input to assist regional efforts in building Tribal environmental capacity and infrastructure and support continued implementation of on-going Tribal environmental programs.
2. Provide input to assist regional efforts to promote assumption of federal environmental programs by Tribal governments consistent with federal law where Tribes desire to be "treated in a manner similar to a state."
3. Assist in developing regional strategies for environmental issues important to Tribes and Region 10 to advance strong environmental protection for all Tribes.
4. Provide input to regional Tribal programs budget priorities and management functions to increase Tribal access to EPA programs, funding, technical assistance, training, and information.
5. Promote continued education and increased communication at every level of EPA on Tribal sovereignty issues, principles of Indian Law, and Tribes as co-regulators.
6. Assist and support the National TOC representatives and NTOC activities.
7. Assist EPA in developing and maintaining open dialogue among Tribes, Alaska Native Federally Recognized Tribes, and EPA.

8. Meet with each Region 10 office (via the assigned Tribal coordinators/specialists) on a regular basis and with the Region 10 Executive Team as needed to keep open and regular communication between RTOC and EPA.

Despite the guiding principles embodied in these goals, the NTOC and RTOC charters, and the various guidance documents, policies, regulations, and laws addressing the environment and the federal trust responsibility, many problems continue to plague Tribal health and environmental conditions in Indian Country and Alaska Native Villages and severely threaten Tribal physical, cultural, and economic well-being.

The natural resources that are so critical to preserving Tribal treaty rights to hunt and fish, that provide the bulk of Tribal income, and that maintain Tribal subsistence and cultural/ceremonial activities have continued to decline in status and health. For example, numerous runs of salmon and steelhead species across the Pacific Northwest are listed under the federal Endangered Species Act as either threatened or endangered and activities in other portions of Region 10 threaten these species even where runs are relatively healthy.

Funding and governance have also been of particular concern to Tribes – without sufficient funding to develop program capacity and implement environmental protection and restoration programs, many of our most basic needs have not been met. Over the past decade, EPA has lacked the ability to appropriately fund the growth of Tribal environmental programs, as those programs become ready to move from a self-determination approach to one that is self-governing. In addition, the number of Tribal governments in Region 10 applying for baseline funding has increased without any corresponding increase for the region as a whole, thus challenging (in fact severely limiting) the ability of Tribes to build strong environmental programs for the protection of their Tribal rights and communities.

In this document, the Region 10 Tribal Caucus has collaborated with experienced Tribal environmental staff to compile and summarize key regional and national recommendations that have been made over the last eight years on the topics of governance (*see, e.g.*, transition recommendations from national Tribal organizations such as the National Tribal Environmental Council, the National Congress of American Indians, and the NTC), funding, and natural resource policy. It is our aim to assist the agency in a smooth, efficient, and consistent transition in administration, and to help inform FY 2010 funding priorities. We are eager to resume and reinvigorate our collaborative work to improve tribal health and environmental conditions, and are encouraged that the new administration will recognize the importance of preservation of tribal cultures and ways of life, as well as fulfillment of the Federal trust responsibility. We applaud the Administration's view that preservation and restoration of the natural environment and the health and welfare of its citizens are interrelated and complementary common goals.

GOVERNANCE RECOMMENDATIONS

1. Role of New Regional Administrator

EPA Region 10 has the responsibility to provide environmental protection and safety for all citizens through the administration and supervision of the administration of our Nation's environmental laws. The EPA Region 10, Regional Administrator (RA) will be tasked with the responsibility to address the vast environmental issues, policy, and actions and provide effective guidance to assure Tribal federal responsibility to treaty rights and federal agreements is sustained.

To provide meaningful leadership, the new RA should be provided with information essential to understand his or her role in exercising the federal trust responsibility. This should include:

- Information about the lower 48 treaty-based and co-management Tribal governments and the unique governmental structures of the Alaska Native Federally Recognized Tribes and Corporations.
- Information about EPA's federal trust responsibility to Tribes to assist EPA in implementing the 638 self-governance model which represents Tribal government as sovereign nations.
- Information about what is necessary to coordinate and strengthen federal, state, and Tribal relationships so we may address and resolve our environmental issues with respect to our cultural, governmental, and jurisdictional differences.
- Information about transboundary ecosystem management structures between the United States and Canadian federal, state, and Tribal government bodies.

In addition, the new RA should take action to review, reform, and return the separate Tribal Programs into an individual department with authority under the RA. The re-establishment of the EPA Tribal Department will provide us with integrity and authority to address our environmental issues and this action will fulfill the new administration's recognition of Tribes as sovereign governments.

2. Augment Meaning and Requirements of Tribal Consultation

The United States has a unique legal relationship with Tribal governments as set forth in the Constitution of the United States, treaties, statutes, regulations, Executive Orders, and court decisions. This relationship includes recognition of the right of Tribes as sovereign governments to self-determination and an acknowledgement of the Federal Government's trust responsibility to Tribes. When EPA consults with Tribes, it recognizes Tribal governments as sovereign entities and this relationship is referred to as the "government-to-government relationship."

The EPA Region 10 working definition of Tribal Consultation is as follows:

"Consultation" means the process of seeking, discussing, and considering the views of federally recognized Tribal governments at the earliest time in EPA Region 10's decision-making. Consultation generally means more than simply providing information about what the agency is planning to do and allowing comment. Rather, consultation means respectful, meaningful, and effective two-way communication that works toward a consensus reflecting the concerns of the affected federally recognized Tribe(s) before EPA makes its decision or moves forward with its action.

In accordance with the regional 2007-2011 Strategic Plan, EPA Region 10 is working to enhance its consultation, communication, and coordination with Tribes. In an effort to improve its consultation procedures, the Region is currently implementing an intensive, multi-stakeholder project to revise its consultation procedures. The objectives of the revision project are to

increase internal and external understanding of Tribal consultation process, improve uniformity in consultation procedures, increase internal capacity to conduct consultations and increase technical and financial resources to carry out consultations.

Challenges that sometimes limit Tribal consultation are as follows:

- Budget constraints sometimes limit EPA participation in consultation on Tribal homelands (travel dollars are insufficient)
- EPA and Tribes need a central database to track consultations. The database could also serve as a place to hold pertinent documents and resources.
- EPA is often limited in regulatory authority to fully address Tribal concerns (e.g. solid waste, protection of subsistence resources), which sometimes results in a consultation that Tribes might describe as “not meaningful.”
- It is not always clear when consultation is triggered and it is not always easy to determine which Tribes should be involved.
- Confusion exists about who EPA should consult with within Tribal governmental structures.
- Questions exist about how consultation factors into programs delegated to states and how consultation applies when actions are implemented by state programs overseen by EPA.

Recommendations to the administration are as follows:

- Reaffirm the EPA 1984 Indian Policy, which sets forth key principles that guide the government-to-government relationship and Tribal consultation.
- Support the development of the Region 10 Tribal Consultation Procedures, including providing funding for consultation with tribal leaders.
- Increase budget for Tribal consultation to allow EPA to conduct more consultations with Tribes on their homelands.
- Develop a computer-based regional or national consultation clearinghouse/database which would track consultations and hold supporting documents, as well as provide resources to assist in consultation work (maps, treaties, etc).
- Work with the national Tribal and EPA leadership to remove regulatory barriers that limit EPA’s ability to address environmental issues on Tribal homelands, including providing a mechanism that identifies how regulatory gaps in the implementation of environmental protection measures within Tribal lands.
- Revise Executive Order 13175 to clarify when consultation should be extended to Tribes. Revision should include discussion of when consultation is extended in situations where Tribes have subsistence/cultural resources in a given area that is not within their land base. Revision could also include a discussion of how Federal trust responsibility and consultation process extends to delegated programs (delegated to States by EPA).

3. Elevate American Indian Environmental Office (AIEO) to the Administrator’s Office

In 1994, the American Indian Environmental Office (AIEO) was formed within the Office of Water. Housed within a single media program, AIEO's ability to provide effective guidance, advice and oversight across all Agency programs is greatly degraded. The immediate result is a diminishment in effective working relationships with Tribes and Alaska Native Federally Recognized Tribes.

It is our recommendation that Administrator Browner's July 14, 1994 Action Memo be revisited and AIEO be moved out of the Office of Water to the Administrator's Office with an Associate Administratorship.

The action will provide AIEO the capacity to effectively represent the concerns and needs of Tribes and Alaska Native Federally Recognized Tribes and partner with EPA to implement the Agency's Indian Policy. Further, the action will strengthen the EPA's government-to-government relationship with such Tribes

4. Provide Cohesive, Ecosystem-Based Management¹

Tribes within Region 10 have collaborated together to enhance their capacity to address environmental science and policy issues. In the past 40 years, we have relied upon one another in a multi-party partnership to develop and support common policy and science to improve preservation, protection, and management for effective environmental programs within Region 10.

Presently, the federal, state, provincial, Tribal and first nation governments all have some role in managing the ecosystems with each having differing levels of regulatory, science and policy responsibilities. This fragmented management structure is failing and it seems a new approach towards ecosystem management and services should be implemented to enable governing bodies to move past jurisdictional boundaries and bureaucratic limitations.

It is our recommendation that efforts be implemented to identify, create, and enhance collaborative, cohesive, ecosystem-based management efforts that bring together all federal, state, provincial, Tribal and first nation representative, having roles in managing ecosystems to address challenging ecosystem management issues. Successful examples of such efforts include:

Yukon River Intertribal Watershed Council, Upper Columbia United Tribes, Columbia River Intertribal Fish Commission, Northwest Indian Fish Commission, Puget Sound Partnership.

Moreover, the recommendations of the 1999 report Ecosystem-based Fishery Management: A Report to Congress by the Ecosystems Principles Advisory Panel² should be considered in regard management issues impacting fisheries.

¹ Discussed at the 2008 Region X EPA Tribal Leaders Summit

² Available at http://www.st.nmfs.noaa.gov/st7/documents/epap_report.pdf.

Funding and Program Recommendations

1. Indian General Assistance Program (IGAP)

Tribes in Region 10 rely heavily (often times exclusively) on the Indian Environmental General Assistance Program (IGAP) to build capacity to manage and address the environmental issues, needs, and actions within our region. The IGAP supports tribal efforts to protect their hereditary sovereignty rights in both a regulatory and policy arena. The IGAP is the one EPA program that provides the resources, both financial and technical, to Tribes for the core of an environmental program.

The primary recommendation will address the following growth needs within the IGAP:

- Provide adequate funding and authority to support both Tribal and EPA Environmental Program objectives and needs in Region 10
- Provide an increase of funding and authority for EPA Region 10 and Tribes. Program design must meet the needs of Tribes of different sizes and facing different environmental issues. The program should maximize flexibility, so that Tribes can address their own priority needs while ensuring accountability for results.
- EPA Region 10 must have the financial and human resources to support the program

In FY 2007, the GAP Program Assessment Rating Tool (PART) recommendation suggests to EPA that it develop a “mechanism to support Tribal program implementation” as opposed to stating that a legislative process is required. To address the need of growth management in funding and implementation, we recommend EPA Region 10 coordinate with Tribal leaders to transition these programs to address self governing responsibilities and allow Tribes to manage environmental programs as sovereign nations. Therefore, the Region 10 Tribes highly recommends that the EPA GAP Policy be revised to enable implementation.

Recommendation 1: Implement a new flexible environmental program that is modeled after the Bureau of Indian Affairs, 638 Self Governance structures, that will provide program structure, funding, and authority for Tribes to transition from self determination to self governance, enabling Tribes to govern their environment as sovereign nations.

Recommendation 2: Since FY04, the funding provided to Tribes and Alaska Native Federally Recognized Tribes through the IGAP has steadily decreased while inflation has increased. As a result, the funding level has effectively been greatly reduced to the point that many Tribes and Alaska Native Federally Recognized Tribes can not meet their programs needs. Therefore, it is imperative that IGAP funding levels be increased significantly so Tribes and Alaska Native Federally Recognized Tribes can have both an environmental presence in Indian Country, as well as begin implementing the programs they develop.

Recommendation 3: Allow use of economic stimulus dollars to provide additional funds to the Tribal Set Aside under the Clean Water State Revolving Fund and Drinking Water State Revolving Fund.

2. Funding for Safe and Clean Water

Impacts of fiscal stagnancy or cuts in program funding have resulted in layoffs and impair the ability of Tribes to provide adequate environmental protection. Tribal Nations have been forced to do more work with less money. This trend needs to change in order for the Tribal Nations and Alaska Native Federally Recognized Tribes to meet future demands to protect human health and the environment. As such, the following priorities need to be addressed:

- Make the Treatment-in the-same-manner-as-a-State (TAS) process meaningful by providing direct, targeted funding to Tribal Nations as is done for states under certain statutes.
- Ensuring Tribal access to funds provided to states, given that Tribal demographics are often included in state funding formulas, and particularly where states are not using their full allotments.
- Commit to the recommendations made by the interagency Access subgroup to meet the U.S. commitment to the UN Millennium Development Goal and comment to the EPA Strategic Goal to reducing the lack of Tribal access to safe drinking water and waste water infrastructure by 50% by the year 2015.
- Lift (or remove) the cap on Clean Water Act and Safe Drinking Water Act Tribal set asides for State Revolving Fund (SRF) and increase available funding for Tribes
- Redirect unused or underutilized infrastructure funding (for instance, from states) to meet Tribal needs. Additional funding to support tribal programs could be drawn from states that are not using their allotments.
- Tribal Nations with approved TAS for section 303 programs should be truly treated “as states,” with direct, targeted, continuous funding at a predictable and appropriate level.
- Provide additional funding to support Tribal programs from states that are not using their allotments.

3. Air Quality³

EPA’s mission is to protect human health and the environment. Tribes and Alaska Native Federally Recognized Tribes experience a disproportionate share of adverse health and environmental impacts from air pollution and toxins, including carcinogens, endocrine disruptors and other dangerous chemicals in air pollution. EPA must ensure that all people are free to pursue all aspects of their lives safe from these pollutants. There are many critical needs for Tribal air quality program work in Region 10; however, it remains woefully underfunded. Tribes and Alaska Native Federally Recognized Tribes in Region 10 need more resources to address their air quality issues, and more resources need to be supplied to EPA Region 10 itself to ensure appropriate levels of technical assistance and support are provided to Region 10 Tribes and Alaska Native Federally Recognized Tribes.

³ Except for the Region 10 Mercury Strategy information, several of the recommendations listed here are similar to those from *Transition to Green: Leading the way to a healthy environment, a green economy and a sustainable future* (November 2008).

Air quality issues that Region 10 Tribes and Alaska Native Federally Recognized Tribes have identified include particulate matter, unpaved roads, burning, regional haze, air toxics, poor indoor air quality, the need for improved air quality data and informational quality, and the need for improved communication around air quality issues. In 2005, the Federal Air Rules for Reservations (FARR) was promulgated to fill the regulatory gap on Reservations in Idaho, Oregon and Washington; however, Region 10 has not received any additional funding to support the growing needs of FARR program implementation. As more Tribes have taken on additional responsibility for implementing the Clean Air Act (CAA) through Tribal implementation plans (TIPs), delegation of Federal rules, and obtaining Federal inspector credentials, funding levels have not kept pace with this need. For Alaska Native Federally Recognized Tribes, their numerous air quality issues are only in the very beginning stages of being addressed, and significantly more work needs to be done.

Recommendations for CAA funding, program development, and capacity building:

1. Respect and support the sovereign authority of Tribes and Alaska Native Federally Recognized Tribes to determine their own priorities for air quality program development.
2. Increase CAA grant funding to Region 10 Tribes and Alaska Native Federally Recognized Tribes for smoke, smog, soot, road dust, mercury, and air toxics.
3. Expand funding for Tribal air pollution monitoring networks to maintain and enhance the nationwide network for particulate matter, ozone, SO₂, NO_x, lead, ammonia, and air toxics.
4. Implement strategies to mitigate human health impacts from road dust in Alaska for Native Federally Recognized Tribes.
5. Create new CAA set-aside funding for FARR program implementation for EPA Region 10's Office of Air Waste and Toxics and for Tribes in Region 10.
6. Increase funding for assessment and mitigation of the indoor air quality problems affecting human health, including wood burning, diesel generators, moisture and mold, asbestos, radon, and lead. Initiate an inter-agency collaborative effort develop permanent solutions to these Tribal indoor air quality issues that includes the Bureau of Indian Affairs, Indian Health Service, the Department of Agriculture, Housing and Urban Development, and EPA. This inter-agency collaboration should include a tribal representative.
7. Increase Region 10 EPA FTE for Tribal air work.
8. Restore funding for Regional Planning Organizations (RPOs). In Region 10, the Western Regional Air Partnership RPO provided unprecedented opportunities for Tribes, States, Federal land managers, and public and industry stakeholders to effectively work together to address transboundary air quality issues and develop creative solutions.
9. Increase funding and opportunities for Tribes to receive Federal inspector credentials certification and conduct inspection work under the Clean Air Act and the FARR.
10. Restore funding levels for administrative, civil, and criminal enforcement of the Clean Air Act to their historic levels prior to Bush administration cuts.
11. Seek permanent authorization of Direct Implementation Tribal Cooperative Agreements (DITCAs) and establish a set-aside fund for DITCAs.

Recommendations to reduce carcinogens and other toxic air pollution:

1. Expand research on international transport and atmospheric deposition, including research on affects of atmospheric deposition of chemicals the food chain of Tribal subsistence foods and all Tribal lands. This research should include review of the impacts of waste incinerators.
2. Clean up dirty diesel engines in trucks, buses, and ships.
3. Adopt protective cancer risk policies for all future hazardous air pollution rules, and revise recent rules that allow excessive cancer risk.
4. Reverse loopholes for toxic emissions from solid and hazardous waste incineration.
5. Propose deep toxics reductions from industrial boilers.
6. Require protective controls and monitoring for the numerous, smaller sources of toxic air pollution.
7. Require greater continuous monitoring and reporting of air pollution from industrial polluters.
8. Work with the Tribes and Alaska Native Federally Recognized Tribes to implement the Region 10 Mercury Strategy through characterization of fish water and sediment levels, characterization and control of regional mercury sources, and public education and outreach.⁴
9. Propose rules requiring deep reductions in all hazardous air pollution from power plants, including mercury, SO₂, and NO_x sufficient to deliver clean air to all.

4. Climate Change

In Region 10, climate change is here – and with some dramatic consequences. Tribes and Alaska Native Federally Recognized Tribes in Region 10 are already experiencing the effects of global warming: communities being overtaken by the ocean, subsistence and treaty-reserved food sources disappearing, infrastructure being destroyed. EPA must act quickly to address this dire situation.

Recommendations:

1. Reduce emissions quickly and deeply enough to avoid the worst effects of global warming
2. Fully support voluntary and complimentary mitigation programs for and designed by Tribes and Alaska Native Federally Recognized Tribes.
3. Restore and expand support for Tribal science programs, including a regional assessment, research on adaptation, lifecycle assessment, mitigation technologies, and permitting of sequestration.
4. Consult with Tribes and Alaska Native Federally Recognized Tribes at a government-to-government level in rule promulgation, program development, and implementation of climate change work, including greenhouse gas (GHG) assessments, monitoring, emissions credits and trading programs, planning, impact assessments, mitigation, and relocations.
5. Support clean affordable energy projects and transmission development for Tribes and Alaska Native Federally Recognized Tribes.

⁴ EPA Region 10 Mercury Strategy Framework (June 11, 2008).

6. Include Tribes in national climate change strategies such as the US Climate Change Science Program, the US Climate Change Technology Program and the Intergovernmental Panel on Climate Change, as well as other relevant science, policy and advisory boards.
7. Elevate Climate Change to a stand-alone Department, outside of the office of Air and Radiation and implement staff and funding resources to address the issues as a national priority. Coordinate this same model at the regional and tribal governmental level.
8. Provide technical science and policy support for Tribes to assess climate change impacts upon the environment, natural resources, infrastructure to be used for development of a planning mechanism for adaptation and mitigation.
9. Develop and implement national funding and guidance for transition and relocation of Tribal communities due to climate change impacts. Over 200 Alaska Native villages need to be relocated due to climate change impact.
10. Develop and implement a federal/Tribal taskforce with funding to assess and develop a program that will address climate change impacts upon Tribal cultural lifeways. The effort will provide federal and state agencies with Tribal practices used to manage environment and natural resources.
11. Review and implement the recommendations of the April 24th 2009 Indigenous Peoples' Global Summit on Climate Change.⁵

5. Water Quality

Congress intended that the National Pollution Discharge Elimination System would address water pollution that degrades surface waters making them unsafe for drinking, fishing, swimming, and other activities. As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit; however, industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters. In most cases, the NPDES permit program is administered by authorized states. Since its introduction in 1972, the NPDES permit program is responsible for significant improvements to our Nation's water quality.

The State of Alaska's economy is based on the extraction of natural resources and many of the NPDES permits have been related to controversial decisions that have impacted the environment for not only state residents but also the United States. Tribes are concerned with the impact of pollution upon the environment, which is directly integrated with the Alaska Native cultural way of life. Alaska natives depend upon the health of our lands and waters to identify who we are and how we exist in one of the last frontiers in the world.

Recommendation 1: Acknowledge the hereditary sovereign/hereditary rights of Alaska Native Federally Recognized Tribes and provide a government-to-government review and decision-making option for the NPDES permit, as we strongly believe our direct

⁵ Available at <http://www.indigenoussummit.com/servlet/content/declaration.html>.

relationship and dependency on the health of the environment should be considered in the permitting and award process.

Recommendation 2: Provide policy and science capacity building and funding for assistance outside of IGAP for Tribes and Villages to address new NPDES responsibilities. This should include funding for tribal science and policy review.

Recommendation 3: Implement a program, in consultation with Alaska Native Federally Recognized Tribes, to review all NPDES permits issued by the State of Alaska to ensure that the health and environment of Alaska Native Federally Recognized Tribes is protected and, when appropriate, exercise authority under 40 C.F.R. § 123.44 to formally object to state-issued permits.

Recommendation 4: Utilize authority to review states water quality standards under 40 C.F.R. §§ 131.20, 131.21 to ensure that standards are protective of the health and environment of Alaska Native Federally Recognized Tribes.

6. Enforcement and Compliance⁶

Treatment in a Same Manner as a State (TAS):

EPA's review of applications for approval of tribal environmental regulatory programs (referred to as the "treatment-in the-same-manner-as-a-State (TAS) process") has not been adequate and timely.. Moreover, the process presents legal risk for Tribes that choose to pursue these programs. This has resulted in very few Tribes actually implementing many environmental regulatory programs. For example, as of June 2008, only 39 Tribes have been delegated a water quality standards program. Under the Clean Water Act, TAS status is the preliminary step for Tribes to gain regulatory authority over their waters.

Recommendation 1: Revise the regulatory approval process to provide effective and adequate service to Tribes, including reviewing and implementing the recommendation provided by the 2005 General Accounting Office report entitled, Indian Tribes: EPA Should Reduce the Review Time for Tribal Requests to Manage Environmental Programs.

Background: The Clean Water Act is not the only regulatory issue that needs to be addressed, as we are finding this common issue under the Title V of the Clean Air Act, which has only nine approvals, and the Public Water System Supervision under the Safe Drinking Water Act, which has only one approval. The intention of the recommendation is to provide Tribes with the governmental regulatory tools to implement adequate protection for all of the waters in Indian Country and the United States.

The second principle of the 1984 EPA Policy on the Administration of Environmental Programs on Indian Reservations, Principle 2 acknowledges and

⁶ NTC and Region 10, Alaska Caucus

affirms steps needed to support and assist Tribes to assume regulatory and program management responsibilities for reservation lands:

Principle 2: The agency will recognize Tribal governments as the primary parties for setting standards, making environmental policy decisions and managing programs for reservations, consistent with agency standards and regulations.

Recommendation 2: Provide adequate program funding support for Tribes to ensure program success and environmental protection.

Recommendation 3: Review EPA's NPDES review process and include Tribes early in the comment period

In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.⁷

Recommendation 4: Review the terminology and use of the word "state," when addressing "Treatment in the Same manner as a State" or TAS, in which Tribes can receive the authority and jurisdiction from EPA to manage and implement certain environmental programs.

As sovereign nations, Tribes retain a government-to-government relationship with the federal government and the use of the phrase "treatment in the same manner as a state," in an EPA policy for Tribal governments is perceived as objectionable by many tribal leaders concerned about protecting sovereign status and the government-to-government relationship. Furthermore, the phrase contains historically negative connotations that impede the on-going work of developing beneficial environmental policies. Due to this special status, Tribes should not be treated in the same manner as states; rather they should be treated as Sovereign Nations.

7. Cleanup

Presently, Region 10 Tribes and Alaska Native Federally Recognized Tribes are striving to preserve and restore their land by using innovative waste management practices and by cleaning up contaminating properties to reduce risks posed by releases of harmful substances. Tribes and Villages share a relationship with the land that is grounded in long-standing cultural ties that set the foundation for Tribal religious and ceremonial practices. Moreover, the direct link between Tribal subsistence foods and the land are inseparable. As a result, the preservation and restoration of Tribal lands are of extreme importance to all Tribes. Tribes are focusing their environmental efforts on protecting healthy environments and cleaning contaminated land.

As EPA celebrates over 35 years of being protectors of the earth, Tribes are striving to achieve the same goals of land preservation and restoration that the states and federal government have worked towards for 35 years, but in half the time and with a fraction of the resources. The Tribes have valued and relied upon a healthy environment to sustain their indigenous life ways. A serious threat to tribal health in Region 10 are dumpsites with non-enforced regulatory policies or poor operations and management, such as class three dump sites in rural Alaska Native Villages. These recommendations are directly related to the EPA National and Regional Tribal Solid and Hazardous Waste Programs and are new ideas or actions that have not been found in other policy recommendations in the past eight years.

The overarching land preservation and restoration recommendations for Indian Country and Alaska Native Villages include:

Recommendation 1: Support EPA's National Office of Solid Waste request for \$10 million for immediate clean up of 1,500 dumpsites in Indian Country and Alaska Native Villages. Further provide sufficient funding and program capacity to address short term and long term clean up and upgrade needs, as well as provide operations and management funding demands. Ensure that the funding and program is made available to small village with adequate EPA support to effectively implement clean up.

Background: To accomplish these recommendations there are several actions to begin the process: (1) provide adequate funding and staff capacity to continue EPA's Solid Waste Program assessment, tracking, and management of the solid and hazardous waste issues in Indian Country and Alaska Native Villages. The continued efforts will support the EPA Solid Waste Program's baseline study and provide information and next steps needed to identify each location for clean up and funding needs; (2) review the tribal, federal, and state policy and compliance regulations and reform those that are preventing adequate human health protection; (3) develop and establish/implement adequate tools for Indian Country and Alaska Villages that will focus on tribal program implementation, compliance, hazard assessment, integrated waste management and operations planning and funding, resources conservation, risk assessment and revitalization; and (4) review and strengthen implementation of the Superfund program in Indian Country and Alaska Native Villages. These recommendations may enhance the capacity for EPA, Tribes, and Villages to address land restoration and preservation.

8. Toxic Substances

Region 10 Tribes and Villages are impacted directly by unhealthy ecosystems through their indigenous life style and cultural practices. In the watersheds of the Puget Sound, tribal communities can no longer harvest and eat their traditional diets of shellfish and salmon due to the high levels of toxics and pollutants found in the ecosystem. In the North Slope, the native villagers' consumption of seal, walrus, and whale is threatened due to high levels of toxics found in vital parts of the animals; and in the watershed of the Bristol Bay the world's largest salmon run is threatened by a future pollutant discharge from copper tailings, identified by EPA as one of the most harmful pollution forms in the mining industry.

These are a few of the recent ecosystem issues that threaten the health of tribal and native communities and as they build upon one assessment and impact report after another, the same recommendations will continue to evolve.

Recommendation 1: Continue to provide funding and seek partnerships with all agencies to assess and develop regulations and policy on a state and federal level that will protect healthy ecosystems and sustain Tribal subsistence and cultural life-ways.

Recommendation 2: Enhance funding and program development for Tribes and villages to address the need to decrease the percentage of urban watersheds that exceed the National Pesticide Program aquatic life benchmarks for three key pesticides of concern (diazinon, chlorpyrifos, and malathion).⁸

Recommendation 3: Enhance funding and program development for Tribes and villages to assess and reduce the percentage of agricultural watersheds that exceed EPA aquatic life benchmarks for two key pesticides (azinphos-methyl and chlorpyrifos).⁹

Recommendation 4: Enhance funding and program development for Tribes and villages to continue working with EPA and other related agencies to address contamination in traditional foods by developing a culturally appropriate information gathering tools, assessment process and educational outreach. Actual consumption rates of fish and other traditional foods need to be integrated into standards to provide protection of human health.

Recommendation 5: Incorporate subsistence and treaty-resource consumption rates for all Tribes and Alaska Native Federally Recognized Tribes to ensure rates are actually protective of human health.

Recommendation 6: Strengthen protections from dangerous pesticides and hazardous chemicals.

Recommendation 7: Increase research on endocrine disrupting chemicals and review/implement opportunities to ban or phase out unneeded chemicals, such as PBDEs.

9. Resource Extraction

Region 10 and Federally Recognized Sovereign Tribes are facing proposed mining, off shore oil and gas, and pipe-line projects. Region 10 Tribes are already experiencing socio-economic, environmental, health, cultural life ways, and subsistence impacts. Through exploration of minerals the affects of this activity have already disturbed migration routes for

⁸ The 1992–2001 baselines as a percentage of urban watersheds sampled that exceeded benchmarks are: diazinon, 40 percent; chlorpyrifos, 37 percent; and malathion, 30 percent.

⁹ Based on 1992–2001 data, 18 percent of agricultural watersheds sampled exceeded benchmarks for azinphos-methyl and chlorpyrifos.

wildlife, marine mammals, and migratory birds. Through observation and experience from time immemorial our subsistence hunter, fishermen, and gatherers have seen the effects of these exploration activities. EPA should take action to protect our natural resources, through the following:

Recommendation 1: Create a Tribal committee from rural parts of Indian Country and Rural Alaska Native Villages to be involved as a liaison in the permitting process if projects are in or around tribal lands, waters, and air. Communicate the information through a quarterly newsletter and website on current activities.

Recommendation 2: Provide funding for implementation of environmental programs and provide continued funding for the operation and maintenance of the project.

Recommendation 3: Educate, train, and certify Tribal Environmental Staff in each community in water, air, and land.

Recommendation 4: Tribal Environmental Staff will attend regional, state wide and national conferences to further education and out reach on current environmental issues.

Recommendation 5: Respect and support authority of federally recognized sovereign Tribes.

Recommendation 6: Stricter enforcement of the remediation process for example, distribute the fines from the state to tribes who are affected for monitoring purposes.

Recommendation 7: Provide technical science and policy support for Tribes to incorporate Traditional Ecological Knowledge in the permitting process and in the National Environmental Policy Act (NEPA) environmental review process.

Recommendation 8: Implement Environmental Health Assessment during the National Environmental Policy Act (NEPA) environmental review process and continue monitoring the effects.

Recommendation 9: Create an open door policy from all departmental agencies involved to share scientific data with affected Tribes.

Recommendation 10: Create and strengthen Tribal water quality standards that will protect Tribal members and surrounding communities.

Recommendation 11: Continued involvement of the Tribes with the consultation and oversight of the State of Alaska's NPDES permitting process.

Recommendation 12: Revise the regulatory framework for permitting large mines to better protect the environment and consult with Tribes in developing the new regulations and guidance.

